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3 Attorney for Plaintiff

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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN JOSE DIVISION**

9 IVAN VERNARD CLEVELAND,

No. Cv 07-2809-JF

10 Plaintiff,

11 vs.
12 **PLAINTIFF'S ADMINISTRATIVE MOTION**
13 BEN CURRY, Warden, et al.,
14 Defendants.
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Submitted to the Court

16 The undersigned, having on this date filed his appearance as counsel for the plaintiff
17 herein, now makes this ex parte, "administrative" motion for a stay of the current summary
18 judgment proceedings, and asks the Court to convene a case management conference at its
19 earliest convenience, so that a workable approach can be established which will facilitate —
20 without prohibitive cost — necessary adjustments in the parties' approach to the case, in aid of
21 the important constitutional relief which is needed herein, as follows:

22 As noted by this Court in its Order of May 24, 2007, one count of plaintiff's *pro se*
23 complaint raises substantial claims and concerns about the behavior and activities of a certain
24 prison guard (Corrections Officer, or C.O) at the California Correctional Training Facility at
25 Soledad, one Abanico, who has shown himself to be a seriously unbalanced sexual predator. It is
26 alleged he has repeatedly taking advantage of his authority and power over prisoners to subject
27 numerous individual victims among them, usually chosen at whim in the flow of prisoner foot
28 traffic in a main hallway where he has been stationed, to outright physical sexual molestation.

1 The same has consisted of grabbing, rubbing, fondling, squeezing, etc., different men's private
 2 parts outside the clothing, reaching inside clothing to fondle and squeeze the penis, rubbing
 3 between the legs, etc. In one recorded instance he insisted that a prisoner roll back his foreskin.

4 These and kindred attentions are carried out — always with intimidation, and often with
 5 attendant unnecessary force in the form of, e.g, an elbow dug hard into the back, as one is held
 6 spread-eagle facing the wall — on the pretext of a “clothed body search”, which the officer is
 7 evidently authorized to perform on prisoners at random as they move about the institution, for
 8 supposed purposes of “security”.

9 Plaintiff, like numerous other prisoners at CTF, has made formal and informal complaints
 10 about CO Abanico's salacious actions to various members of the prison chain of command, with
 11 no positive results, and has exhausted his administrative remedies as the Court found. He is in
 12 touch with a large number of other prisoners who have complained of the same maltreatment by
 13 the same officer, including 113 who signed and others who joined a mass grievance he prepared
 14 against defendant Abanico. See Attachment. Many assert they have been retaliated against by
 15 Abanico — frequently by way of false disciplinary violation (“115”) allegations, which in turn
 16 seriously and often fatally prejudice parole applications and other available benefits, as he and the
 17 other defendants well know — for making these complaints against him.

18 In particular, the undersigned has interviewed four other CTF prisoners who have also
 19 completed the “602” complaint process, on essentially the same sexual molestation grievance
 20 against the same officer: Robert Morris, Desmond Jones, Demetrius Huff and Kenneth Trask.
 21 Trask, by way of example, recently spent more than six months in the hole, “pending
 22 investigation”, based on a totally false report by Abanico that Trask had threatened him. Plaintiff
 23 wishes to add their claims to his own herein; in the alternative, they seek leave to intervene as
 24 plaintiffs, per R. 24(a) F.R.Civ P., on that one count of the existing complaint.¹

25 ** ** ** **
 26

27 ¹ The plaintiff will be asking to sever the other two claims in his complaint, dealing with
 28 library access and dental care, from the molestation claim he shares with so many other prisoners.

1 To plaintiff's knowledge then, C.O. Abanico has been the subject of a large number of
 2 complaints to the prison administration, many of which graphically describe his perverse actions,
 3 but the response from defendant officials in the chain of command has been rejection across the
 4 board, and a refusal to face facts; and the officer apparently remains assigned to posts in the
 5 institution where he can continue his random assaults. The grievances of the plaintiff and his
 6 cohorts having been steadfastly quashed by the prison administration and the Departmental
 7 hierarchy above them, they are left at a pervert's mercy unless they can obtain relief in this Court.

8 In these circumstances, and in the wake of this Court's Order of Nov. 2, 2007, the
 9 undersigned now asks the Court to convene a Case Management Conference, per R.16, F.R.Civ
 10 P., to consider revision and expansion of the plaintiff's complaint (which is still unavailable
 11 online) so that the more general problem of this officer's predations against CTF prisoners — and
 12 the foolish, blind-eye indulgence and protection and harboring of such a sick and dangerously
 13 provocative molester by the chain of command at the prison and in the Corrections Department
 14 — can be promptly and effectively addressed. From the plaintiff's perspective through his new
 15 counsel, the agenda would include the following:

- 16 + Amendment of the Complaint, with severance of Cleveland's two other counts;
- 17 + Addition or intervention of four other named plaintiffs; provision for others who may
 18 perfect additional claims;
- 19 + Consideration of the possible need for preliminary relief, particularly as to retaliation
 20 claims; practical discussion of possible negotiated remedies and other cooperation;² and the
 21 possible need to certify a Class;

22

23 ² Long and generally fairly grim experience litigating about and against prisons and their
 24 personnel has contributed to substantial hesitancy by the undersigned in taking up the cause
 25 reflected in the complaints of these prisoners; which I now do, nevertheless, as a matter of
 26 conscience, after meeting several of them and hearing their stories. But, I will be operating at a
 27 good distance, without resources or support of any kind besides my own time and effort, going
 28 against the full powers and dead weight of remorseless State bureaucrac(ies), and always needing
 help and understanding from the Court per R.16(a)(1), (3) and (5), and Rule 1...

+ Legal questions regarding the availability of permanent equitable relief restricting prison work assignments for CO Abanico (or his ilk); regarding other possible remedies, and regarding issues arising from restrictions in the so-called Prison Litigation Reform Act;

- + Discovery plaintiff may need to establish facts and/or meet defendants' dispositive motions and claims;

- + Disposition of (bogus) Qualified Immunity claims and other summary judgment issues if any;

- + Measures needed to control expenses, and reasonably resolve matters with a minimum of contention, and wear and tear...³

10 WHEREFORE, this honorable Court is respectfully asked to accept the Appearance and
11 substitution of the undersigned as counsel for the plaintiff formerly *in proper*; to Stay the current
12 proceedings on defendants' Motion for Summary Judgment herein, and toll the time period in
13 which plaintiff must answer it; to order and convene a Case Management Conference at its
14 earliest convenience to consider and discuss revision of the case as outlined above; and to grant
15 such other and further relief as may be just and appropriate in the premises of this repulsive and
16 discouraging case.

DATED: April 25, 2008.

Respectfully submitted

Dennis Cunningham

³ See Note 2, above.

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

INMATE/PAROLEE
APPEAL FORM
CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. _____

1. _____

2. _____

2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Mr. Cleveland	H-60545	19-B-A .. None	F-66-256-40

A. Describe Problem: INMATE Cleveland was degraded AND Violated by Officer (Adanico) (Binge No. 4313) This Grievance is to be filed due to a Number of INSTITUTIONAL Violations Committed by this Officer. Officer Adanico is Clearly Showing an Demonstrating Abuse of Authority UNNECESSARY HARASSMENT, AND Along With Inmate Cleveland A Numerous Amounts of Complaints have been Filed due to INAPPROPRIATE Touching: Being OF ones GENITALIA, GROW AND INNCH. Thanks.

If you need more space, attach one additional sheet.

B. Action Requested: THAT there be put a stop to this degrading AND DISRESPECTFUL TREATMENT, BY this OFFICER, THAT inmate Cleveland along with other inmates be TREATED IN A PROFESSIONAL MANNER WHICH AVOIDS EMBARRASSMENT OR INJURY.

Inmate/Parolee Signature: Mr. Cleveland

Date Submitted: _____

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____

Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____

Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: A-1

ATTACHMENT

, ABUSE OF AUTHORITY.
 , UNNECESSARY HARASSMENT.
 , INAPPROPRIATE TOUCHINGS BEING OF ONES GENITALIA GROINS AND
 INNER THIGHS.
 , STOPPINGS AND SEARCHINGS THE SAME INMATE FOR NO
 REASON WITHIN -30-min FROM FIRST SEARCH.
 , FORCING ELBOW IN INMATES SPINE/BACK IN A WAY THAT
 INFILKS PAIN, ESPECIALLY INMATES WHO MAY SUFFER FROM
 MEDICAL CONDITIONS, OR WHO HAVE TO DEPEND ON A
 WALKING CANE. THIS OFFICE IS AND HAS BEEN DEMONSTRATING A SIGN OF UNPROFESSIONALISM BY DEGRADING
 INMATES, BY FORCING THEM TO PUT THEIR HANDS ON THE
 WALL WHILE HE USES THEIR BACKS TO WRITE ON. THIS
 GRIEVANCE IS IN NO WAY DUE TO ANY TYPE OF RE-
 TALIATION BY THE INMATES. BUT IS TO ASURE THAT FUTURE
 CONTACT WITH THIS OFFICER WILL BE HANDLED
 IN A PROFESSIONAL MANNER. WE THE UNDERSIGNED
 INMATES FEEL THAT WE HAVE BEEN DEGRADED AND VIOLATED
 BY OFFICER "ABANICO" Page No- 4313e WE HAVE SIGN THIS
 LEGAL "602" GRIEVANCE SO THAT WE MAY ADVISE THE ADMINISTRATIVE
 STAFF OF THIS DISRESPECTFUL AND DEGRADING TREATMENT.
 OFFICER ABANICO IS CLEARLY VIOLATED INMATES RIGHTS, HE
 IS ALSO SHOWING AND DEMONSTRATING A SIGN OF HARASSMENT
 AND ABUSE OF HIS INSTITUTIONAL AUTHORITY. THIS OFFICER
 SEARCHED INMATE CLEVELAND AND OTHER INMATES IN A WAY
 THAT IS PROHIBITED BY LAW. OFFICER ABANICO IS TOUCHING AND
 IN SOME CASE SQUEEZING INMATES GENITALIA. HE IS DEGRADING
 INMATES BY TOUCHING THEIR INNER THIGHS AND GROIN AREA. THIS
 CAN AND IN MANY OPINIONS IS A CLEAR ACT OF SEXUAL
 MISCONDUCT. ~~IN PROPER~~ ^{TOUCHING} IS A INSTITUTIONAL VIOLATION.
 AND SHOULD NOT UNDER ANY CIRCUMSTANCES BE TOLERATED OR ALLOWED.
 OFFICER ABANICO IS ALSO VIOLATED INMATES RIGHT BY PUTTING AND
 SHOVING HIS ELBOW INTO A INMATES BACK FOR KNOW APPARENT
 REASONS.

A-2

ALSO This OFFICER Should NOT be allowed TO USE ANY PART OF A inmates body TO write ON, OR be allowed to make RACIST REMARKS BEING THAT his REASON FOR STOPPING AND SEARCHING more black inmates ON THE DAY THAT CHICKEN IS SEE IS DUE TO black peoples like for this TYPE food" THIS WAS AN IS A 'RACIST REMARK' FOR ANY STAFF /OR employee TO JOIN IN OR CONDONE IN SUCH "ILL-LEGAL METHODS" Then SHP ALSO ~~ME~~ SHOWING LACK OF LEADERSHIP" NO INMATE SHOULD HAVE TO SUBJECT OR BE TREATED IN SUCH A DEGRADING MANNER. THIS OFFICER HAS VERY LITTLE IF NONE RESPECT FOR THE RIGHTS FOR OTHERS. COMPLAINTS HAVE BEEN FILED. INMATES HAVE BEEN THREATENED THAT THEY WOULD BE HELD IN "ISOLATION" IF THEY WENT FORWARD WITH THESE "COMPLAINTS". A PRISONER CAN ALSO BE PUNISHED FOR FILING A LEGAL GRIEVANCE OF ANY KIND OR A PRISON OFFICIAL. RETALIATION OCCURS AND GOES INTO AFFECT WHEN PRISON OFFICIAL PUNISHES PRISONER BECAUSE PRISONER HAS EXERCISE HIS/HER CONSTITUTIONAL RIGHTS. HAFF V COOLEY 923 SUPP 1104.

WE AS INMATES DO CLEARLY UNDERSTAND AND "RESPECT" THAT ONE OF THE REQUIREMENTS AND DUTIES OF A CORRECTIONAL OFFICER IS TO SEARCH CELLS / AND ALSO CONDUCT IN A BODY SEARCH. BUT WHEN AN INMATE IS BEING TREATED AND DEGRADING IN A WAY THAT THE OFFICER IS DOING. THEN THERE IS A VERY SERIOUS PROBLEM WITHIN THIS INSTITUTION THAT NEEDS AND SHOULD BE DEALT WITH IMMEDIATELY. "EVERY INMATE HAS THE RIGHT TO BE TREATED RESPECTFULLY, IMPARTIALLY, AND FAIRLY, BY ALL STAFF/EMPLOYEE. A STAFF/EMPLOYEE OR STAFF WILL NOT "OPENLY" DISPLAY DISRESPECT OR CONTempt FOR OTHERS IN ANY MANNER INTENDED TO OR REASONABLY LIKELY TO INCITE OR PROVOKE VIOLENCE [3004] (A)(B)(C). AN INMATE IS SUBJECT TO AN INSPECTION, EITHER CLOTHED OR UNCLOTHED. 911 SUCH INSPECTIONS SHOULD BE CONDUCTED IN A PROFESSIONAL MANNER WHICH AVOIDS "EMBARRASSMENT" OR INDIGNITY TO THE INMATE [3287]. (B) OF PEN. CODE.

SIGNING - Sheet 11

NAME	C.D.C. No.
IVAN Cleveland	H-60545
Karen Chastain	C-05576
Shawn Johnson	B-31355
E. DeLoach	H-16942
Jeffrey	E-19855
WARRENTON, DEAN	E-85765
Al Brown	H-68911
Calvin D. Burns	V-75053
Shirley Carter	C-81587
Cal Howell	K-87903
John S.C.	V-44441
James M. Caudell	D-56260
Orlene	P-63094
Robert Clegg Jr.	V-61591
Albert M. Clegg	D-85936
John McCloud	F-09979
Angela D. Davis	T-96240
Carol P. DeGaudenzi	J-57533
John DeLoach	V-46471
John DeLoach	E-26569
Donna Damress	D-93828
Russell	P-26759
Bernie J.	C-81271
Brown	T-80518
Robert Clegg	J-52468
Robert Clegg Jr.	F-22386
Robert Clegg Jr.	F-13215
Robert Clegg Jr.	F-10736
Robert Clegg Jr.	G-344 VP
Robert Clegg Jr.	E-1134
Robert Clegg Jr.	Z-1116102L
Robert Clegg Jr.	G-138L
Robert Clegg Jr.	C-32166
Robert Clegg Jr.	E-1134
E. Kennedy	D-30780
E. Kennedy	F-304
K. Miller	F-13232
Ernest B. McInnis Jr.	G-24509
Ernest B. McInnis Jr.	G-24509 VP

Tammie ~~Horn~~ F-15797Jasmine ~~Plum~~ J-41001

Aaliyah H-57414

Kenny J-12257

M. ~~Horn~~ D-60498J. A. ~~Thibault~~ D-37345

Carter S. K-19328

B. ~~Turner~~ E-16197 D-3226Cotton ~~Shaw~~ H-65569 EW/LR 348J. L. ~~Pike~~ J-31562 B-1081D. M. ~~Maloy~~ P-66115 Y-3074P

Simone H-67207 Y-219

B. ~~Books~~ C-11422 D-W236D. ~~Books~~ C-05327 F-2304O. ~~Books~~ K-59999 DW-5284PA. ~~Books~~ D-05086 DW-104LH. ~~Books~~ J-11450 D-W-2044PK. ~~Books~~ K-86475 EW-216LA. ~~Books~~ T-56703 EW-124UG. ~~Books~~ E-99461 B.W-113VC. ~~Books~~ E-88670 E-1084D. ~~Books~~ E-10079 C-137E. ~~Books~~ G-2210 C-99461D. ~~Books~~ G-3150P J-894513E. ~~Books~~ V-03356 L-4-W-125F. ~~Books~~ F-16042 DW-309LG. ~~Books~~ H-80005 D-W-109CH. ~~Books~~ P-41551 E-135-LI. ~~Books~~ P-18103 Z-218J. ~~Books~~ C-115730 G-219K. ~~Books~~ C-556067 Y-133L. ~~Books~~ C-67683 Z-124 LM. ~~Books~~ H-57996 Y-133N. ~~Books~~ D-6612 E-234O. ~~Books~~ P-18103 A-104 REED H-450055 E-127LP. ~~Books~~ P-5693 E-917Q. ~~Books~~ H-57996 E-90740 EW-2264PR. ~~Books~~ D-90573 I-12549S. ~~Books~~ D-73611 E-2264T. ~~Books~~ H-2006 E-1114

Robert Dennis D13147
 Bruce Brown EF7250
 Harry Lawrence T-70157
 B. Deed T-64385
 Howard Henry C-87490
 Brown Henry V-64383
 Lorraine Johnson P-74047
 Birden Bobby C-37176
 Ronald Thomas T-43909
 L. U. Drury C-41751
 G. McClus K-96270
 (Redacted) V34630
 (Redacted) 1936410
 (Redacted) K-88105
 (Redacted) T-19991
 D. T. Palmer P-17387
 (Redacted) E-47757 E-1221
 Lee Eric D-11150 G-307L
 DONNELL Morris D-73077 G-259
 (Redacted) H-41984 D-W-117 LOW
 (Redacted) C-36895 D-W-1234P
 (Redacted) Duncan Jr. A. L. K-43663 DW-121
 (Redacted) C-15726 T-338
 (Redacted) D-57121 C-105
 (Redacted) H-61102 B-334
 (Redacted) P-89446 D-W-1144P
 (Redacted) T-01072 CW-337
 (Redacted) K-02454 D-W 230 u
 (Redacted) F-20095 DW-129L
 (Redacted) D-68422 G-W-102L
 (Redacted) C-78227 GW 210
 (Redacted) B-67647 F-306-L
 (Redacted) C-75232 F-107 u
 (Redacted) C-35670 F-242L
 (Redacted) K-37859 T-3541

R Miller	C-13017	F-35940
J Thomas	E18879	F-346
Palmer, D.	E-36564	F-3434
Rowden	C 46704	E 315

A-7